

Remarks

Claims 1, 4-10, 13, 15, 19-22, and 24-29 are pending in the application and are presented for the Examiner's review and consideration. Claims 1, 15, 20, and 21 have been amended, claims 14 and 23 have been cancelled, and claims 24-29 have been added. Applicant believes the claim amendments, cancellation, additions, and accompanying remarks herein serve to clarify the present invention and are independent of patentability. No new matter has been added.

Objection to the Abstract

The Examiner objected to the Abstract because it is over the 150 word limit. Accordingly, Applicant has amended the Abstract in compliance with the rules. In light of the foregoing, Applicant request reconsideration and withdrawal of the objection to the Abstract.

35 U.S.C. §103 Rejections

Claims 1, 8-9, 13-15, 19-23 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,008,433 to Stone ("Stone") in view of U.S Patent No. 5,609,635 to Michelson ("Michelson"). In response, Applicant respectfully submits that these rejections should be withdrawn.

Stone discloses a wedge shaped device having two angularly offset intersecting principal surfaces. The device further includes a pair of plates attached at the end of the device, the plates defining a contact surface for contacting the outer surface of the bone. As seen in FIG. 2B, the contact surface of the plate is a separate, distinct, surface from that of the two angularly offset intersecting principal surfaces. Accordingly, Stone fails to disclose a device having first and second major surfaces and a side surface therebetween, with a first channel extending through the first major surface and side surfaces such that a fastener extends at an acute angle through the side surface to the first major surface.

The Examiner noted that Michelson discloses using a coating of bone growth promoting

material, wherein the bone growth promoting material includes bone morphogenic protein. Michelson discloses lordotic interbody spinal fusion implants for use in the disc space between two vertebrae. In an embodiment, the implant has movable projections, in the form of spikes, which are movable from a first position within the implant to a second position extending outside of the implant. The implant has opposing wedge shaped members having a central threaded opening for receiving a threaded screw having a head and a slot. The wedges are facing each other so that upon turning of the screw, the two wedges are drawn together to cause the spikes to pivot about their end and project to the exterior of the implant through the aligned slots. Thus, even assuming that Michelson does disclose using a coating of bone growth promoting material, Michelson fails to overcome the deficiencies of Stone.

Claim 1 now recites an implantable device for changing the spatial relationship between first and second bones. The device comprises a body configured and dimensioned for insertion into a joint located between the first and second bones and coated with a bone growth promoting material. The body includes bone-contacting first and second major planar surfaces, a side surface therebetween, a first channel extending through the first major planar surface and side surface, and a fastener means for fixedly connecting the body to the first bone. The fastener means is disposed in the first channel such that the fastener means angularly extends at an acute angle through the side surface to the first major planar surface. One major surface tapers to form a pointed edge with the other major surface and the bone growth promoting material includes a bone morphogenic protein.

In light of the foregoing, Applicant submits that claim 1 is patentable over Stone in view of Michelson. As claims 8-9, 13, 15, 19-22 depend from claim 1, including all of the recitations thereof, Applicant submits that these claims are patentable over Stone in view of Michelson at least for the same reasons.

Claims 4-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Stone in view of Michelson, and further in view of U.S. Patent No. 4,394,370 to Jefferies ("Jefferies"). Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Stone in view of Michelson, and further in view of U.S. Patent No. 5,669,909 to Zdeblick *et al.* ("Zdeblick").

Claims 4-7 and 10 depend from claim 1. As set forth above, claim 1 is submitted to be patentable over Stone in view of Michelson. Applicant further submits that Jefferies and Zdeblick fail to overcome the deficiencies in Stone and Michelson. As such, Applicant submits that these claims are patentable at least for the same reasons.

New Claims

Applicant has added new claims 24-29 and respectfully submits that these new claims are patentable over the prior art of record.

Conclusion

In light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

No fee is believed due. However, please charge any fees (or credit any overpayment of fees) to the Deposit Account of the undersigned, Account No. 503410 (Docket No. 780-A02-021-5).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. D. Bianco', with a long horizontal flourish extending to the right.

Paul D. Bianco, Reg. # 43,500

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